CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 728.

PORTO RICO RAILWAY, LIGHT AND POWER COMPANY

vs.

ADALBERTO DIAZ MOR.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

FILED FEBRUARY 18, 1920.

(27,483)

(27,483)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 728.

PORTO RICO RAILWAY, LIGHT AND POWER COMPANY

vs.

ADALBERTO DIAZ MOR.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the first circuit	1	1
Statement	1	1
Question certified	2	2
Clerk's certificate	3	2

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 5, 1920.

1 United States Circuit Court of Appeals for the First Circuit, October Term, 1919.

No. 1432.

PORTO RICO RAILWAY, LIGHT & POWER COMPANY, Defendant, Plaintiff in Error,

v.

ADALBERTO DIAZ MOR, Plaintiff, Defendant in Error.

Error to the District Court of the United States for the District of Porto Rico.

Before Bingham, Johnson and Anderson, JJ.

Question of Law Certified by the United States Circuit Court of Appeals for the First Circuit to the Supreme Court of the United States.

February 4, 1920.

The facts in this case are as follows:

This action was brought in the United States District Court for Porto Rico by Adalberto Diaz Mor, a subject of the King of Spain, who has resided in San Juan, Porto Rico, for the past twenty years and more and has his domicile there, against the Porto Rico Railway Light & Power Company, a corporation organized under the laws of Porto Rico with its principal office in the city of San Juan.

The ground of complaint is that the plaintiff, on the twenty-second day of September, 1918, was injured through the negligence of the defendant in carelessly maintaining a switch draw-bar at the
2 side of the track near Stop 15 on its railway. The matter in dispute exceeds, exclusive of interest and costs, the sum of three thousand dollars.

In the District Court its jurisdiction was objected to by the defendant for the reason that, on the facts in the case, the diversity of citizenship required by the Act of March 2, 1917, 39 Stat. at Large, Section 41, Chapter 145, to confer jurisdiction on the District Court for Porto Rico, did not exist. The objection to the jurisdiction, however, was overruled, the case proceeded to trial before a jury, a verdict was found for the plaintiff in the sum of four thousand dollars, and judgment was entered thereon. A writ of error was duly prosecuted to this court by the defendant and the errors assigned relate to the jurisdiction of the District Court of Porto Rico and the merits of the cause.

In view of the foregoing we desire the instruction of the Supreme Court upon the following question:

Has the United States District Court for Porto Rico, since the Act of Congress of March 2, 1917, 39 Stat. at Large, Chap. 145, Sec. 41,

jurisdiction to entertain a suit brought by a subject of the King of Spain, who is domiciled in Porto Rico, against a corporation organized under the laws of Porto Rico and having its principal place of business there, the amount involved, exclusive of interest and costs, being in excess of the sum of three thousand dollars?

It is now, to wit, February 4, 1920, ordered, that the foregoing statement of facts, and question of law arising thereon, together with the fact that this court desires the instruction of the Supreme Court for the proper decision of said question of law, be certified under the seal of this court, and transmitted to the Supreme Court.

By the Court.

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON,
Clerk.

3 *Certificate of Certification.*

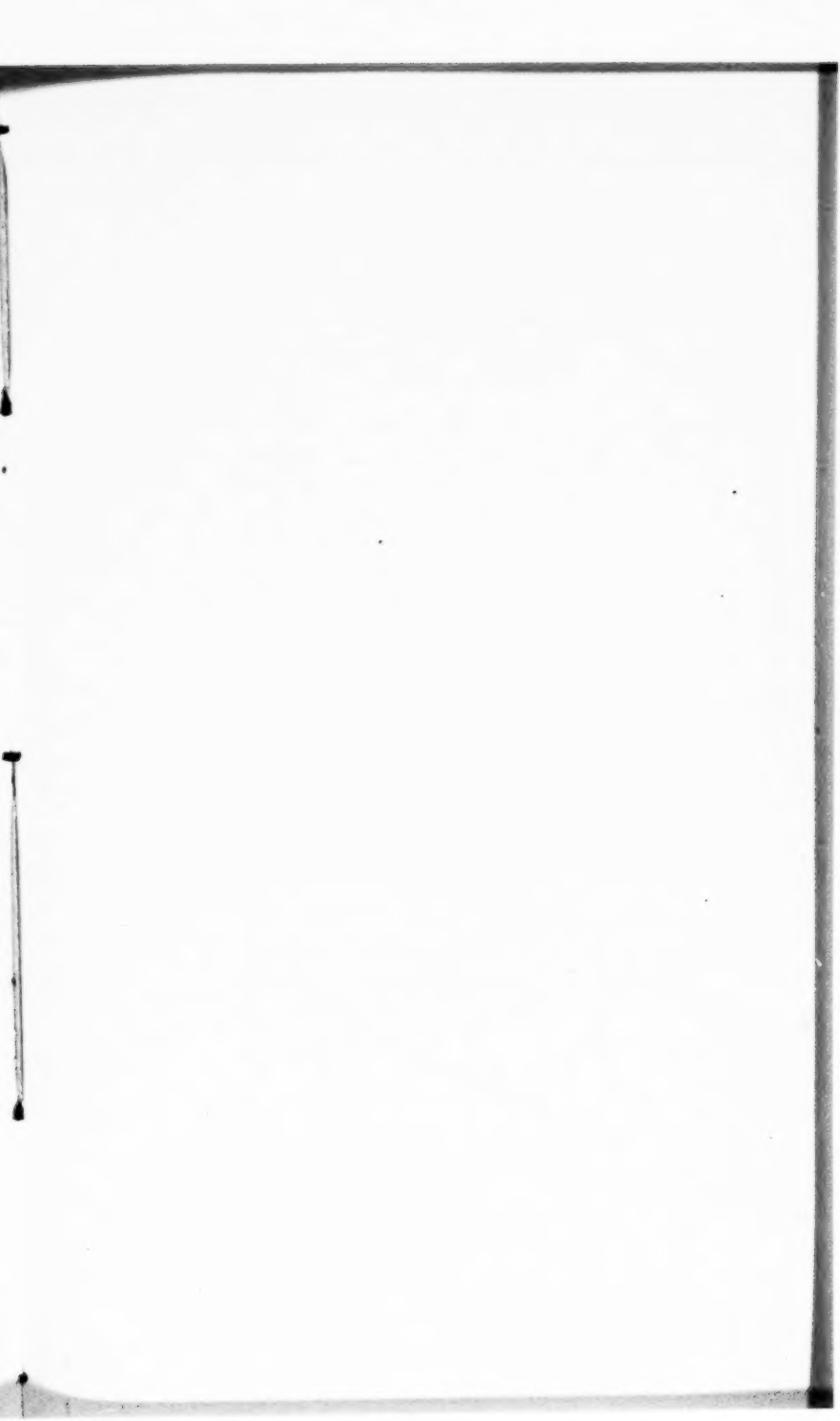
And now, here, the Judges of the United States Circuit Court of Appeals for the First Circuit, certify that the foregoing is a true copy of an Order of Court entered on February 4, 1920, in said cause numbered and entitled, No. 1432, Porto Rico Railway Light & Power Company, Defendant, Plaintiff in Error, v. Adalberto Diaz Mor, Plaintiff, Defendant in Error, and that pursuant to said order, the statement of facts and question of law arising thereon, together with the fact that said Circuit Court of Appeals desires the instruction of the Supreme Court of the United States for the proper decision of said question of law, contained in said order, are hereby certified under the seal of said United States Circuit Court of Appeal- for transmission to said Supreme Court.

In testimony whereof I hereto set my hand and affix the seal of said United States Circuit Court of Appeal- for the First Circuit, at Boston, in the First Judicial Circuit, this tenth day of February, A. D. 1920.

[Seal United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON,
Clerk.

Endorsed on cover: File No. 27,483. U. S. Circuit Court Appeals, 1st Circuit. Term No. 728. Porto Rico Railway, Light & Power Company vs. Adalberto Diaz Mor. (Certificate.) Filed February 18th, 1920. File No. 27,483.



Supreme Court of the United States,

OCTOBER TERM, 1919.

PORTO RICO RAILWAY, LIGHT & POWER COMPANY,
Plaintiff-in-Error,
against
ADALBERTO DIAZ MOR,
Defendant-in-Error.

No. 728.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Motion to Require Whole Record to be Sent up and to Advance Cause for Early Hearing.

Now comes the above named plaintiff-in-error and moves the court to require that the whole record and cause be sent up for its consideration as provided in Judicial Code, Section 239, and to advance this cause for argument at an early date.

The defendant-in-error has waived notice of the motion *and consented that the same be granted.*

A certified copy of the record is herewith submitted.

The following is a brief statement of the facts and matter involved and of the reasons for the application:

The action was brought in the United States District Court for Porto Rico by Adalberto Diaz

Mor, a subject of the King of Spain domiciled in Porto Rico, against Porto Rico Railway, Light & Power Company, a Porto Rican corporation. The ground of complaint was that the plaintiff sustained personal injuries as the result of defendant's negligence in maintaining a certain switch appliance. The matter in dispute exceeds $3,000, exclusive of interest and costs.

In the District Court, its jurisdiction was objected to by the defendant. The objection was overruled, and the case proceeded to trial before a jury. A verdict was found for the plaintiff in the sum of $4,000 and judgment was entered thereon. The defendant sued out a writ of error, upon which the case was argued in the Circuit Court of Appeals for the First Circuit in January, 1920.

After the argument and without rendering any decision, the Circuit Court of Appeals, of its own motion, prepared and certified to this court the question whether the United States District Court for Porto Rico, since the Act of Congress of March 2, 1917 (39 Stat. at Large, Chap. 145, Sec. 41), has jurisdiction to entertain a suit brought by a subject of the King of Spain, who is domiciled in Porto Rico, against a corporation organized under the laws of Porto Rico and having its principal place of business there, the amount involved, exclusive of interest and costs, being in excess of $3,000.

In addition to that question of jurisdiction, the record and assignments of error in the Circuit Court of Appeals present the following questions:

(a) Whether or not the District Court erred in

refusing to direct a verdict for the defendant on the ground that the plaintiff was guilty of contributory negligence as a matter of law;

(b) Whether or not the District Court erred in allowing the plaintiff, while testifying in his own behalf, to give his opinion as to the amount of the damages he had sustained as a result of the injury; and, also, in allowing evidence of special damage not pleaded.

(c) Whether or not the District Court erred in excluding evidence offered by the defendant to show that, prior to the accident of plaintiff, it had no notice or knowledge of any person having fallen because of the switch appliance, the District Court having previously permitted the plaintiff to prove that he had seen other persons fall over the switch.

All the questions in the case are, therefore, questions of law. They are questions arising with increasing frequency in Porto Rico, and although, as we conceive, they are clearly answered by numerous authorities in the States, they do not appear to be covered by any decision recognized as authoritative in either the Insular Courts or the United States District Court for Porto Rico. Such an authoritative decision upon questions frequently arising is greatly to be desired, and inasmuch as this case is already in this court upon one of the questions involved, we urge the propriety of bringing up the whole record. As already stated, the defendant-in-error consents to this being done.

Had the Circuit Court of Appeals decided the jurisdictional question, this court, we conceive,

would have granted a writ of certiorari upon application of the defeated party because of the jurisdictional question involved. Upon such writ, the other questions would have been open for review here, and from that aspect, also, the case appears to us to be one where this court should exercise its power to bring the whole record before it, to the end that there may be as full a review here as would have been obtained upon a writ of certiorari.

As reasons why the cause should be advanced, the plaintiff-in-error calls attention to the fact that the District Court is now exercising jurisdiction in numerous cases to which its jurisdiction does not extend if the question certified to this court by the Circuit Court of Appeals should be answered in the negative. There are, as we are credibly informed and believe, over 10,000 Spaniards residing and doing business in Porto Rico who are registered in the Spanish Consulate as having retained their Spanish nationality under the provisions of said Act of March 2, 1917, as against about 2,000 Americans born in Continental United States and residing in Porto Rico. About one-quarter of the total wealth of Porto Rico is in the hands of Spaniards domiciled there and nearly every large store and important commercial house in Porto Rico is owned and conducted by Spaniards. In view of these facts, it is respectfully suggested that the question whether the District Court has jurisdiction of cases simply because the parties on one side are of Spanish nationality even though domiciled in Porto Rico is one which it is to the public interest to have decided quickly.

For these reasons an advancement of the case and an order requiring the record to be sent up are hereby prayed.

Respectfully submitted,

CARROLL G. WALTER,
Counsel for Plaintiff-in-Error.

Dated, March 15, 1920.

Notice of Foregoing Motion.

Notice of this motion has been waived and the granting of the same has been consented to by defendant-in-error.

Supreme Court of the United States,

OCTOBER TERM, 1919.

PORTO RICO RAILWAY, LIGHT & POWER COMPANY,
Plaintiff-in-Error,
against
ADALBERTO DIAZ MOR,
Defendant-in-Error.

No. 728.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR PLAINTIFF-IN-ERROR.

This action was brought in the United States District Court for Porto Rico by Adalberto Diaz Mor, a subject of the King of of Spain domiciled in Porto Rico, against Porto Rico Railway, Light & Power Company, a Porto Rican corporation. The ground of complaint was that the plaintiff sustained personal injuries as the result of defendant's negligence in maintaining a certain switch appliance. The matter in dispute exceeds $3,000. exclusive of interests and costs.

In the District Court, its jurisdiction was objected to by the defendant. The objection was overruled, and the case proceeded to trial before a jury. A verdict was found for the plaintiff and judgment was entered thereon. The defendant sued out a writ of error, upon which the case was

argued in the Circuit Court of Appeals for the First Circuit in January, 1920. The assignment of errors reiterated the claim that the District Court had no jurisdiction.

After the argument and without rendering any decision, the Circuit Court of Appeals, of its own motion, prepared a statement of the facts and certified the same to this court with a request for its instruction upon the question whether the United States District Court for Porto Rico, since the Act of Congress of March 2, 1917 (39 Stat. at Large, Chap. 145, Sec. 41), has jurisdiction to entertain a suit brought by a subject of the King of Spain, who is domiciled in Porto Rico, against a corporation organized under the laws of Porto Rico and having its principal place of business there, the amount involved, exclusive of interest and costs, being in excess of $3,000.

The cause is now here for argument upon the question so certified.

POINT I.

The District Court had no jurisdiction of the action because of the citizenship and domicile of the parties.

The jurisdiction of the District Court is fixed by Section 41 of the Act of Congress of March 2, 1917, Chapter 145, familiarly known as the "Jones Act" (39 *Stat. L.* 951; *Fed. Stat. Ann.* 2 Ed., *1918 Supp.*, pp. 607, 626; *U. S. Comp. Stat. 1916, Supp. 1919*, Sec. 3803 q q).

The material parts of the section read as follows, the sentence particularly involved being that printed in italics:

"That Porto Rico shall constitute a judi-

cial district to be called 'the district of Porto Rico.' The President, by and with the advice and consent of the Senate shall appoint one district judge, who shall serve for a term of four years and until his successor is appointed and qualified and whose salary shall be $5,000 per annum. * * * The district court for said district shall be called 'the District Court of the United States for Porto Rico,' and shall have power to appoint all necessary officials and assistants, including the clerk, interpreter, and such commissioners as may be necessary, who shall be entitled to the same fees and have like powers and duties as are exercised and performed by United States commissioners. Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. In addition said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. *Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico,* wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of $3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid: *Provided,* that nothing in this Act shall be deemed to impair the jurisdiction of the

> District Court of the United States for Porto Rico to hear and determine all controversies pending in said court at the date of the approval of this Act."

The plaintiff, as already stated, is a subject of Spain domiciled in Porto Rico, and the question is: Has the District Court jurisdiction because the plaintiff is a subject of a foreign State, even though he is domiciled in Porto Rico?

That question depends upon whether the words "not domiciled in Porto Rico" modify the entire phrase "citizens or subjects of a foreign State or States, or citizens of a State, territory, or district of the United States" or whether they modify only the phrase "citizens of a State, Territory, or District of the United States."

In its recent decision upon the War-time Prohibition Act, this court said:

> "As a matter of ordinary construction, where several words are followed by a general expression as here, which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all."
>
> *United States* v. *Standard Brewery*, 251 U. S. 210, 218, quoting LORD BRAMWELL in Great Western Ry. Co. *v.* Swindon &c. Ry. Co., L. R. 9 App. Cas. 787, 808.

Under that rule, the words "not domiciled in Porto Rico" must be read as modifying the entire phrase, and hence it follows that the plaintiff's domicile in Porto Rico prevents his foreign nation-

ality from giving jurisdiction, and the question certified must be answered in the negative.

But even assuming that the sentence italicized in the above quotation from the statute can be read with the other meaning (*i. e.*, the meaning which limits the words "not domiciled in Porto Rico" to the phrase "citizens of a State, Territory or District of the United States"), the problem is presented as to which of the two meanings Congress actually intended.

To solve that problem it is proper, indeed necessary, to consider "the old law, the mischief, and the remedy"

> *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318;
> *Blackstone, Introduction*, § II, p. 87;

and, also, the natural or absurd consequences of any particular interpretation.

> *Holy Trinity Church* v. *United States*, 143 U. S. 457;
> *Knowlton* v. *Moore*, 178 U. S. 41, 77;
> *United States* v. *Hogg*, 112 Fed. 909, (Lurton, Day and Severens, *JJ.*);
> *Interstate Drainage Investment Co.* v. *Board of Commissioners*, 158 Fed. 270 (Sanborn, VanDevanter and Philips, *JJ.*);
> *Stockyards Loan Co.* v. *Nichols*, 243 Fed. 511, 516, (C. C. A. 8th Circuit).

In the case last cited the settled rule is summed up as follows:

> "In order to ascertain the intention of the Legislature in the enactment of section 4031,

> the court may look to each part of the statute, to other statutes upon the same or relative subjects, to the old law upon the subject, to the evils and mischiefs to be remedied, and to the natural or absurd consequences of any particular interpretation."

The original Foraker Act, the first law passed by Congress for the government of Porto Rico, provided that the District Court thereby created should have, "in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States" (Act of April 12, 1900, C. 191, Sec. 34; U. S. Comp. Stat. 1916, Sec. 3785). This grant of jurisdiction, so far as ordinary civil controversies between private parties were concerned, was exceedingly narrow and limited, because none of the persons forming the substantial body of inhabitants of the island were citizens of the United States or of any State thereof and hence a case cognizable in a Circuit Court of the United States would scarcely ever arise in Porto Rico (See *Fraenkl* v. *Cerecedo*, 216 U. S. 295, 302; *Martinez* v. *Association de Senoras*, 213 U. S. 20, 22).

In the following year, therefore, the jurisdiction was enlarged by the enactment of the Act of March 2, 1901, Section 3 of which (31 Stat. L. 953; U. S. Comp. Stat. 1916, Sec. 3786) provided as follows:

> "The jurisdiction of the district court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the Act of April twelfth, nineteen hundred, extend to and embrace controversies where the parties, or either of them, are citizens

> of the United States or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of one thousand dollars."

By that act, the jurisdiction of the District Court, which previously had been more contracted than that of its prototype in the States (the Federal Circuit Courts), was enlarged so as to be considerably more extensive than that of the Circuit Courts, for by that act its jurisdiction was not limited to cases of *diverse* State citizenship. That is to say, by the terms of the Act of 1901 it was not essential that all the parties on one side of the controversy be citizens of the United States or citizens or subjects of a State or country different from that of which the parties on the other side were citizens or subjects. All that was requisite was that all the parties on one side be citizens of the United States or citizens or subjects of some foreign State, and it mattered not what was the citizenship of the parties on the other side. Thus, one Spaniard could sue another in the District Court for Porto Rico, or one citizen of New York could sue another citizen of the same State, and so on (*Ortega* v. *Lara*, 202 U. S. 339, 344; *Cuebas* v. *Cuebas*, 223 U. S. 376, 388; *Sucesores de L. Villamie & Co.* v. *Merced*, 239 Fed. 86, 89, 90). In short, the Act of 1901 constituted an "obvious departure" from the principles controlling the jurisdiction of a United States court as contradistinguished from a State court (*Ganozi* v. *Dastas*, 204 U. S. 64, 73).

This created dissatisfaction. The dissatisfac-

tion became so great that Congress was asked to *abolish the District Court entirely.*

While the Jones Bill was pending in Congress, the Porto Rico Bar Association presented to the Senate Committee on Pacific Islands and Porto Rico, at a hearing held February 7, 1916, on the then pending bills to provide a government for Porto Rico, a set of resolutions which are interesting as well as enlightening. They appear at pages 38 to 40 of the report of the hearings of the Committee printed by the Government printing office in 1916. The resolutions quote the provisions of the Jones Bill as to the jurisdiction of the District Court and recite that the Porto Rican Bar Association has repeatedly indorsed "the discontinuance and suppression of the District Court for Porto Rico" and has passed resolutions to that effect; that the insular courts do full justice in all cases and adequately protect the life, liberty and property of "all native Porto Ricans, American citizens and foreigners"; that the Spanish language is the one in most extensive use and the only one known to a great majority of the inhabitants and residents of the Island, and hardship and expense are imposed upon parties and their counsel in trying cases in the District Court which do not exist when recourse is had to the insular courts "where the proceedings are conducted exclusively in the Spanish language;" and that the remedy of appeal is availed of in the Supreme Court of Porto Rico without unnecessary delay or expense, and litigants there have an opportunity to "employ counsel personally known to them," while appeals from the District Court for Porto Rico must be taken "to the United States Circuit Court of Appeals for the Second (*sic*) Circuit in Bos-

ton" or to the Supreme Court of the United States "at considerable expense and inevitable delay." The resolutions further recite that business transactions in the Island are had in accordance with a jurisprudence based upon the civil law and a majority of the attorneys are versed only in that branch of the law, while the principles and rules upon which the District Court for Porto Rico is conducted are based on the common law of England and statutes of the United States and its rules and principles of equity, "thereby practically excluding the native attorneys, with the exception of those who have pursued and completed their studies in the United States, from practicing their profession before said court." They further recite that this has created "confusion and dissatisfaction" and that the extensive jurisdiction of the District Court for Porto Rico is "without precedent" and is "not necessary to the protection of either the inhabitants of the Island or of the other residents therein." They further state that as a general rule the officers of the District Court are selected "from elements residing in States whose laws are based on the common law" and are without experience with "the judicial systems of Spanish-speaking countries" and that there is thus caused a "deficient application of the governing law to be applied." In view of those facts, the Porto Rican Bar Association prayed the Committee as follows:

> "(1) To discontinue the United States District Court for Porto Rico, conferring the necessary additional jurisdiction on the Supreme Court of Porto Rico for the hearing and determination of all cases in which a Federal question is involved or the statutes of

the United States are to be enforced, with additional jurisdiction over cases of admiralty and bankruptcy.

"(2) In the event that the preceding measure should not be deemed wise, then to restrict the jurisdiction of the said United States District Court for Porto Rico to the cognizance of cases in admiralty and bankruptcy, conferring all other jurisdiction upon the insular courts of Porto Rico.

"(3) In the event that either of the two preceding measures should be deemed unwise, then to *adopt the limitations contained in the Jones bill hereinbefore quoted restricting the jurisdiction of said court to the cognizance of controversies in which either of the parties is a non-resident or without domicile in Porto Rico*, thus bringing the said court within the just and lawful scope of its jurisdiction as a district court of the United States by removing the unnecessary additional jurisdiction now conferred."

Other interests presented radically different views, and the Senate adopted an amendment striking out the words "not domiciled in Porto Rico" (*Congressional Record*, Vol. 54, Part 3, p. 2263). But it subsequently receded from that amendment when the bill was in conference (*Congressional Record*, Vol. 54, Part 4, p. 3994). If the amendment had *not* been receded from, the jurisdiction of the District Court, instead of being restricted, would have been enlarged to such a tremendous extent that the insular courts would have been almost legislated out of existence. For if the words "not domiciled in Porto Rico" were

left out, the court would have jurisdiction of every controversy where a citizen of the United States was a party, and as other provisions of the bill (Section 5 of the Act as finally passed) made all the citizens of Porto Rico citizens of the United States, it follows that with those words eliminated the court would have had jurisdiction of practically every controversy arising in Porto Rico involving more than $3,000. It is not surprising, therefore, that the Senate receded from its amendment.

Thus it appears that what the Congress intended to do was to *steer a middle course* between the divergent views and desires of different interests. *It preserved the existence of the District Court, but limited its jurisdiction.*

When the bill was under consideration in the House, Mr. Cannon asked that some one tell what the bill provided. Mr. Miller, of Minnesota, then said (*Congressional Record*, Vol. 53, Part 8, p. 7474):*

> "There is continued the Federal Court of the island *out of deference to the foreign and*

*Inasmuch as Mr. Miller's statement was made in response to *a specific request for information about the bill*, for the benefit of the whole house, it seems to us that it stands substantially upon the footing of a statement by a committee chairman in charge of a bill, and hence may be resorted to as an aid to interpretation where the bill itself is ambiguous. (*United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318.)

The following extract from the record shows exactly the circumstances under which the statement of Mr. Miller quoted in the text was made (*Congressional Record*, Vol. 53, Part 8, p. 7474):

> "MR. CANNON. I had hoped that somebody, as we are all busy about many matters of legislation, would tell us about this bill. It seems to me there ought to be time in general debate in which some one would tell us about what this bill does.
>
> "MR. MILLER of Minnesota. The details of the proposition as contained in the bill?
>
> "MR. CANNON. Precisely.
>
> "MR. MILLER of Minnesota. I can do so in a moment."

> *American business interests*, who desire this court to remain, with one Federal judge and one Federal attorney . There is no reorganization made of the other courts, they remaining about the same as they have been heretofore, and on the whole they have been satisfactory."

The Congressional intent, therefore, was to satisfy, so far as possible, both those who wanted the court as a forum for Americans and foreigners and those who did not want the court at all or, at least, wanted to make it as innocuous as possible. And the principle adopted as a means of satisfying those opposing desires was that of leaving the court open to those who were Americans or foreigners *in a real and substantial and practical sense, i. e.*, those who actually lived outside of Porto Rico, and closing the court to those whose American or foreign citizenship was *merely technical or formal, i. e.*, those who, while maintaining the *form* of foreign allegiance, actually lived and moved and had their being—in short, were domiciled—in Porto Rico.

In brief, then, "the mischief" was the expanded jurisdiction which the old law gave to the District Court, and the purpose was to cure the mischief by curtailing the jurisdiction as much as possible *without leaving the American or foreigner having occasional business in Porto Rico entirely to the laws and procedure of the insular courts.*

That being the purpose, it seems absurd to suppose that it was intended to leave the court open to the vast number of resident Spaniards and other foreigners and close it only to the comparatively few Americans who happen to have

taken up their homes in the Island. If that be the correct interpretation, practically nothing has been accomplished toward curing the mischief. For there are, as we are credibly informed and believe, over 10,000 Spaniards residing and doing business in Porto Rico, as against about 2,000 Americans born in Continental United States and residing in Porto Rico; and about one-quarter of the total wealth of Porto Rico is in the hands of Spaniards domiciled there and nearly every large store and important commercial house in Porto Rico is owned and conducted by Spaniards.

Still more startling is the idea that the intent of Congress was to drive *resident Americans* into the insular courts, with their Spanish language and civil law doctrines, and at the same time allow and sometimes force *resident Spaniards* into a court which is required by law to conduct its proceedings in the English language (Sec. 42, Act of March 2, 1917) and, to some extent at least, enforces doctrines of common law and equity with which the Spaniard is entirely unfamiliar. That is the practical result of the view announced by the learned judge of the District Court, and it is precisely the result of which complaint had been made, as is strikingly shown by the resolutions of the Porto Rico Bar Association mentioned above. We respectfully submit that no adequate reason has been or can be advanced for such an anomaly.

If, as the learned District Judge has said, his court was created, in part at least, "to protect parties in interest, whether Americans or foreigners, from local bias", what conceivable reason could there have been for giving that protec-

tion to Spaniards domiciled in Porto Rico and withholding it from Americans domiciled there?

Another consideration, exceedingly persuasive if not controlling, is this: Congress must be presumed to have had in mind Article XI of the Treaty of 1898 between Spain and the United States, which provides:

> "The Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the Courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and that *they shall have the right to appear before such courts, and to pursue the same course as citizens of the country to which the courts belong.*"

In other words, the *treaty* puts Spaniards residing in Porto Rico upon the same footing as Americans residing there with respect to appearance and proceeding in the courts. The *statute*, on the other hand, if construed as the District Judge construed it, puts them on a different footing. In one aspect it may be said that under that construction the Spaniard is treated *more favorably*, in that he is given a right to go into a court to which Americans domiciled in Porto Rico are denied access, and as there is no discrimination against the Spaniards there can be no claim that the treaty has been violated. But the statute, according to the decision below, not alone gives resident Spaniards the *right to sue* in the court below: it provides, also, that they *may be sued* there by native Porto Ricans, whereas Americans domiciled in Porto Rico may not be sued

there by native Porto Ricans. From this point of view, therefore, it may be said that under the construction of the statute adopted by the District Judge there is a discrimination against Spaniards because from some aspects it may well be that Spaniards will regard their liability to being sued in the court below by native Porto Ricans as a distinct disadvantage. They may prefer to be sued in the insular courts where they may proceed in a familiar language and according to their traditional jurisprudence.

Therefore, an affirmative answer to the question certified may raise a serious question of conflict between the treaty and the statute. Congress undoubtedly never intended such a conflict, and to avoid it, as well as for the other reasons stated, the question should be answered in the negative.

Furthermore, the right to sue a native Porto Rican in the United States District Court, rather than in the insular courts, may be, under many circumstances, a privilege greatly to be desired; and if it be held that a citizen of a State, territory or district of the United States domiciled in Porto Rico cannot avail himself of that privilege, whereas a citizen or subject of a foreign state domiciled in Porto Rico may avail himself of that privilege, there is manifestly a clear discrimination in favor of foreign citizens or subjects against citizens of a State, territory or district of the United States. It is difficult to believe that Congress intended any such discrimination. On the contrary, having preserved the District Court, over the protest of the native Porto Ricans and solely "out of a deference to the foreign and

American business interests" who desired the court to remain, there is every reason to suppose that the intent of Congress was to keep foreigners and Americans on a parity as between themselves with respect to their right to resort to the District Court in controversies with native Porto Ricans. In other words, the intent was that foreigners and Americans alike could resort to the District Court if *not* domiciled in Porto Rico, and that foreigners and Americans alike were to be precluded from resorting to the court if they *were* domiciled in Porto Rico.

The question certified should therefore be answered in the negative.

Respectfully submitted,

CARROLL G. WALTER,
Counsel for Plaintiff-in-Error.

April, 1920.